WEST VIRGINIA CODE: §16-30-6

§16-30-6. Private decision-making process; authority of living will, medical power of attorney representative and surrogate.

(a) Any capable adult may make his or her own health care decisions without regard to guidelines contained in this article.

(b) Health care providers and health care facilities may rely upon health care decisions made on behalf of an incapacitated person without resort to the courts or legal process, if the decisions are made in accordance with the provisions of this article.

(c) The medical power of attorney representative or surrogate shall have the authority to release or authorize the release of an incapacitated person's medical records to third parties and make any and all health care decisions on behalf of an incapacitated person, except to the extent that a medical power of attorney representative's authority is clearly limited in the medical power of attorney.

(d) The medical power of attorney representative or surrogate's authority shall commence upon a determination, made pursuant to section seven of this article, of the incapacity of the adult. In the event the person no longer is incapacitated or the medical power of attorney representative or surrogate is unwilling or unable to serve, the medical power of attorney representative or surrogate's authority shall cease. However, the authority of the medical power of attorney representative or surrogate may recommence if the person subsequently becomes incapacitated as determined pursuant to section seven of this article unless during the intervening period of capacity the person executes an advance directive which makes a surrogate unnecessary or expressly rejects the previously appointed surrogate as his or her surrogate. A medical power of attorney representative or surrogate's authority terminates upon the death of the incapacitated person except with respect to decisions regarding autopsy, funeral arrangements or cremation and organ and tissue donation: Provided, That the medical power of attorney representative or surrogate has no authority after the death of the incapacitated person to invalidate or revoke a preneed funeral contract executed by the incapacitated person in accordance with the provisions of article fourteen, chapter forty-seven of this code prior to the onset of the incapacity and either paid in full before the death of the incapacitated person or collectible from the proceeds of a life insurance policy specifically designated for that purpose.

(e) The medical power of attorney representative or surrogate shall seek medical information necessary to make health care decisions for an incapacitated person. For the sole purpose of making health care decisions for the incapacitated person, the medical power of attorney representative or surrogate shall have the same right of access to the incapacitated person's medical information and the same right to discuss that information with the incapacitated person's health care providers that the incapacitated person would have if he or she was not incapacitated.

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(f) If an incapacitated person previously expressed his or her wishes regarding autopsy, funeral arrangements or cremation, organ or tissue donation or the desire to make an anatomical gift by a written directive such as a living will, medical power of attorney, donor card, driver's license or other means, the medical power of attorney representative or surrogate shall follow the person's expressed wishes regarding autopsy, funeral arrangements or cremation, organ and tissue donation or anatomical gift. In the absence of any written directives, any decision regarding anatomical gifts shall be made pursuant to the provisions of article nineteen of this chapter.

(g) If a person is incapacitated at the time of the decision to withhold or withdraw life-prolonging intervention, the person's living will or medical power of attorney executed in accordance with section four of this article is presumed to be valid. For the purposes of this article, a physician or health facility may presume in the absence of actual notice to the contrary that a person who executed a living will or medical power of attorney was a competent adult when it was executed. The fact that a person executed a living will or medical power of attorney is not an indication of the person's mental incapacity.

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